

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRUCE CASAWAY,

Petitioner,

v.

KEN QUINN,

Respondent.

Case No. C07-5191RJB

ORDER DENYING CERTIFICATE
OF APPEALABILITY

This matter comes before the court on the petitioner's Motion for Certificate of Appealability. Dkt. 29. The court has reviewed the relevant documents and the record herein.

PROCEDURAL HISTORY

On January 15, 2008, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, concluding that petitioner's claim that his Sixth Amendment right to a speedy trial was violated, was unexhausted and procedurally barred; and that his claims of violation of his right to trial by jury, insufficient evidence to convict on the charge of first degree assault, ineffective assistance of counsel for failing to seek a cautionary or accomplice instruction, and violation of his right of confrontation did not warrant habeas relief. Dkt. 22. On March 13, 2008, the court adopted the Report and Recommendation, with additional analysis, dismissed the procedurally barred claim, and denied the remaining claims on the merits. Dkt. 27. Petitioner has now appealed to the U.S.

1 Court of Appeals for the Ninth Circuit and has requested that the court issue a Certificate of
2 Appealability pursuant to 28 U.S.C. § 2253(c). Dkt. 29. Petitioner argues that the court should
3 review his unexhausted claim, and that all of his claims merit relief. *Id.*

4 STANDARD FOR GRANTING A CERTIFICATE OF APPEALABILITY

5 The district court should grant an application for a Certificate of Appealability only if the
6 petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §
7 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner
8 must make a showing that reasonable jurists could debate whether, or agree that, the petition should
9 have been resolved in a different manner or that the issues presented were adequate to deserve
10 encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (quoting
11 *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the court denies a claim on
12 procedural grounds, the petitioner must show that jurists of reason would find it debatable whether
13 the petition states a valid claim of the denial of a constitutional right and that jurists of reason would
14 find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*,
15 120 S.Ct. at 1604.

16 DISCUSSION

17 This court dismissed petitioner’s first claim, that his right to a speedy trial under the Sixth
18 Amendment was violated, as unexhausted and procedurally barred. This issue was therefore
19 dismissed on procedural grounds. Petitioner made no reference in his state court proceedings to a
20 specific constitutional guarantee and did not set forth a statement of facts that showed he was
21 entitled to relief on this claim. The claim is unexhausted and procedurally barred. Petitioner’s
22 unexhausted and procedurally barred claims are not cognizable in this petition. There is nothing in
23 the record that would support a conclusion that jurists of reason would find it debatable whether this
24 issue states a valid claim of the denial of a constitutional right and that jurists of reason would find it
25 debatable whether this court was correct in its procedural ruling

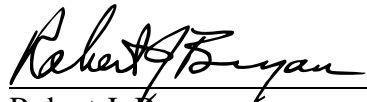
1 With regard to the claims that the court reached on the merits in both the Report and
2 Recommendation and the court's March 13, 2008 order adopting the Report and Recommendation,
3 the court carefully reviewed the record and determined that these claims did not warrant habeas
4 relief. Petitioner has not shown that reasonable jurists could debate whether, or agree that, the
5 petition should have been resolved in a different manner or that the issues presented were adequate
6 to deserve encouragement to proceed further.

7 The Certificate of Appealability should be denied.

8 Accordingly, it is hereby **ORDERED** that petitioner's Motion for Certificate of Appealability
9 (Dkt. 29) is **DENIED**.

10 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to
11 any party appearing *pro se* at said party's last known address.

12 Dated this 25th day of April, 2008.

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14 Robert J. Bryan
15 United States District Judge
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